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BEFORE THE

Federal Communications Commission

WASHINGTON, D. C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Implementation of	)	GN Docket No. 93-252
Sections 3(n) and 332 of	)	
Communications Act	)	
	)	
Regulatory Treatment of	)	
Mobile Services	)	

TO: The Commission

COMMENTS OF PAGING NETWORK, INC.

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SUMMARY

The underlying premises of Section 6002(c) of the Budget Reconciliation Act of 1993 are that "like" mobile services should be subject to like regulatory treatment, and that mobile service markets that are competitive should be subject to only that minimal regulation necessary to protect competition, consumers and the public interest. The Notice initiates a comprehensive review of the current regulatory framework with a view towards implementing regulations that satisfy the Act's mandate.

Without reaching any tentative conclusions, the FCC asks whether paging carriers might appropriately be defined as private, and thus not subject to any state or federal regulation. Under one analysis posited, paging carriers that deploy store and forward technology which does not simultaneously connect the calling party and the paged party are not offering an "interconnected service," and do not fall within the definition of commercial mobile service. This potential interpretation is the antithesis of what Congress intended. The legislative history and prior FCC precedents uniformly demonstrate that paging carriers offer interconnected service, and are intended by Congress to be defined as commercial mobile service providers. The statute in fact compels that result.

Nonetheless, as the Notice suggests, it is clearly appropriate to analyze the mobile service market(s) to determine the level of competition, and to forebear from regulation of those

markets which are characterized by open entry, multiple players, and declining price, or in other words, are competitive markets. The FCC's proposed reliance on its market power analysis in Competitive Carrier is also clearly appropriate, and gives the FCC a framework under which it can classify mobile services which vary in their degree of competitiveness. As demonstrated below, the paging market, which is uniformly characterized by open entry, multiple carriers, and aggressive price and service competition, should be subject to streamlined regulation.

Lastly, the FCC asks whether it should exercise its plenary jurisdiction over interconnection provided to both mobile service providers who are classified as commercial mobile service providers and private carriers. PageNet believes this exercise of jurisdiction both lawful and essential. Without regard to their common or private carrier status, it is critical that interconnection be provided to mobile service providers on reasonable terms and conditions.

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TO: The Commission

COMMENTS OF PAGING NETWORK, INC.

Pursuant to Section 1.415 of the Federal Communications Commission's ("FCC") rules, Paging Network Inc. ("PageNet"), through its attorneys, hereby comments in the above captioned proceeding.[1] PageNet's comments demonstrate that, under the Budget Reconciliation Act of 1993,[2] paging carriers come within the definition of commercial mobile service, and are subject to Title II of the Communications Act. Nonetheless, PageNet illustrates that market conditions are so vigorously competitive that the FCC should forebear from imposing any regulations under Title II not required under the Communications Act.

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1 Implementation of Sections 3(n) and 332 of the Communications Act; Regulatory Treatment of Mobile Services, Notice of Proposed Rulemaking, FCC 93-252, rel. Oct. 8, 1993 (hereinafter the "Notice").

2 Omnibus Budget Reconciliation Act of 1993, Pub. L.No. 103-66, Title VI, § 6002(b), 107 Stat. 393 (1993) (hereinafter "Budget Act").

Statement of Interest

PageNet, since its inception in 1982, has expanded through internal growth to become the largest paging company in the United States. It currently provides service in 28 states and the District of Columbia, serving over 2.8 million subscribers. PageNet estimates it holds well over 60 common carrier licenses and 470 private carrier paging licenses, representing over 3,600 transmitters. PageNet files approximately 80 - 100 transmitter authorization applications per month to support its existing systems and to support expansion into new markets. It expanded into 13 new markets in 1992, has opened 7 in 1993, and has plans to open several additional markets in 1994.

The FCC's proposals will quite likely reclassify either PageNet's offering of private or common carrier facilities, and change the regulatory structure under which either its common or private services are currently offered. It is anticipated that the FCC's order in this proceeding will also determine the degree to which, by statute, PageNet is assured reasonable interconnection. PageNet therefore has a significant interest in the outcome of this proceeding.

SUMMARY

The underlying premises of Section 6002(c) of the Budget Reconciliation Act of 1993 are that "like" mobile services should be subject to like regulatory treatment, and that mobile service markets that are competitive should be subject to only that minimal regulation necessary to protect competition, consumers and

the public interest. The Notice initiates a comprehensive review of the current regulatory framework with a view towards implementing regulations that satisfy the Act's mandate.

Without reaching any tentative conclusions, the FCC asks whether paging carriers might appropriately be defined as private, and thus not subject to any state or federal regulation. Under one analysis posited, paging carriers that deploy store and forward technology which does not simultaneously connect the calling party and the paged party are not offering an "interconnected service," and do not fall within the definition of commercial mobile service. This potential interpretation is the antithesis of what Congress intended. The legislative history and prior FCC precedents uniformly demonstrate that paging carriers offer interconnected service, and are intended by Congress to be defined as commercial mobile service providers. The statute in fact compels that result.

Nonetheless, as the Notice suggests, it is clearly appropriate to analyze the mobile service market(s) to determine the level of competition, and to forebear from regulation of those markets which are characterized by open entry, multiple players, and declining price, or in other words, are competitive markets. The FCC's proposed reliance on its market power analysis in Competitive Carrier is also clearly appropriate, and gives the FCC a framework under which it can classify mobile services which vary in their degree of competitiveness. As demonstrated below, the paging market, which is uniformly characterized by open entry,

multiple carriers, and aggressive price and service competition, should be subject to streamlined regulation.

Lastly, the FCC asks whether it should exercise its plenary jurisdiction over interconnection provided to both mobile service providers who are classified as commercial mobile service providers and private carriers. PageNet believes this exercise of jurisdiction both lawful and essential. Without regard to their common or private carrier status, it is critical that interconnection be provided to mobile service providers on reasonable terms and conditions.

I. PAGING SERVICES FALL WITHIN THE DEFINITION OF COMMERCIAL MOBILE SERVICE UNDER § 332(d)(1) OF THE COMMUNICATIONS ACT

Section 332(d)(1) defines commercial mobile services as any "mobile service that is provided for profit and makes interconnected service available (a) to the public or (B) to such classes of eligible users as to be effectively available to the public, as specified by regulation by the FCC."[3] As set forth below, paging services offered today generally fall squarely within this definition, and thus are commercial mobile services subject to common carrier regulation under the Communications Act.

A. Paging Services Are Offered on a "For Profit" Basis

Scores of carriers, both common and private, offer paging services. See Section II, infra. One common feature of virtually all of them is that they provide these services on a "for profit" basis and therefore satisfy the first element of the commercial

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[3] 47 U.S.C. § 332(d)(1).

service definition. As the FCC recognizes (Notice at ¶ 11), there are also some entities who operate paging systems for their own internal use, who do not offer paging services on a "for profit" basis. To the extent that these entities do not offer their service on a "for profit" basis, or in other words, use their paging facilities exclusively for their own internal use, they are not commercial mobile service providers.

There is potentially some blurring of these classifications where entities which would otherwise qualify as private offer excess capacity on a commercial basis. The sale of excess capacity falls squarely within the "for profit" category, however, so it is reasonable to treat those entities' provision of excess capacity as satisfying the "for profit" element of the commercial mobile service test.

B. Virtually All Paging Carriers Provide Interconnected Service

The FCC seeks comment on the degree to which paging carriers generally provide "interconnected service" within the meaning of 47 U.S.C. § 332(d)(2), and therefore satisfy the "interconnected service" element of the CMS definition. The FCC also seeks comment on the extent to which paging services using "store and forward" technology should be considered "interconnected" within the meaning of the statute. PageNet submits that these services are "interconnected" and satisfy that element of the CMS definition.

In PageNet's view, all mobile services which either originate or terminate on the public switched network are interconnected for

purposes of Section 332(d). As demonstrated below, this view both is consistent with Congressional intent and comports with long-standing FCC precedents defining interconnected services.[4]

Subsection (c)(1)(B)[5] guarantees to mobile service providers the right to "establish physical interconnection" with the services of common carriers. Section 332(c)(2) expressly states that carriers seeking interconnection under Subsection (c)(1)(B) are [or will be] providing interconnected service. ("The term 'interconnected service' means .... service for which a request for interconnection is pending pursuant to subsection (c)(1)(B).")[6] Thus, the statute makes clear that carriers who exercise their rights to obtain interconnection under Section 332(c)(2) offer interconnected service under Section 332(d).

The physical interconnections which are available in varying degrees to the paging industry include Type I (connecting to an end office) and Type II (connecting to a tandem office), both of which route calls that originate on the public switched network to

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4 In defining interconnected, Congress has instructed the FCC to consider "how that term is used and qualified in current Section 332(c)(1)." H.R. Rep. No. 103-213, 103rd Cong. 1st Session at 495-96 (1993) (hereinafter "Conference Report").

5 47 U.S.C. § 332(c)(1)(B).

6 Section 332(c)(2). Under Part 90.7 of the FCC's rules, interconnection is defined "... as the connection through automatic or manual means of private land mobile stations with the facilities of the PSTN to permit the transmission of messages or signals between points in the wire line or radio network of a public telephone company and persons served by private land mobile radio stations."

the paging carrier's network for termination.[7] It would appear then, that services which incorporate these physical interconnections are interconnected service.

In PageNet's view, the fact that carriers use "store and forward" technology in order to efficiently transmit pages, and therefore do not link the originating line and the terminating page on a real time basis does nothing to detract from the interconnected nature of the service. The page still originates on the public switched network, and is carried over that network to the paging network via interconnection facilities of a common carrier.

The FCC's own precedents also dictate this interpretation of the statute. Its prior bar on the interconnection of Pan American Satellite ("PanAmSat") to the public switched network is a case in point. There, PanAmSat and other providers of satellite systems competing with Intelsat were prohibited from providing switched services, defined as those services which "interconnected" with the public switched network. The prohibition on interconnection included those transmissions that were stored in the network for subsequent (non-real time) transmission over the public switched network.[8] Thus, the fact that a transmission which was routed from the point of origination to the point of termination was

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7 See In re The Need To Promote Competition and Efficient Use of Spectrum for Radio Common Services, 2 FCC Rcd 2910, 2913 (1987).

8 Establishment of Satellite Systems Providing International Communications, Report and Order, CC Docket 84-1299, 101 FCC 2d 1046 (1985); recon. Memorandum Opinion and Order, 61 RR 2d 649; further recon., 1 FCC Rcd 439 (1986).

stored momentarily did not prevent a finding that the service was interconnected.

The FCC asks whether application of In re Data Com, and Millicom Corporate Digital Communications, Inc., 65 RR 2d 235 (1983), aff'd sub nom. Telocator Network of America, Inc. v. FCC, 761 F.2d 763 (1985) compel a different result. We think not.

The facts in Data Com are vastly different. In Data Com, there was no physical connection between Data Com,[9] the entity operating the paging network, and the caller originating the page.

In Millicom, the FCC and the Court simply did not reach the question of whether the system, and services, were interconnected. The decision rested on the fact that the land stations authorized to Millicom were not multiple licensed or shared by authorized users, making the statutory restrictions on interconnection inapplicable.[10]

The FCC (Notice at 7, fn.25) appears to infer that whether or not a carrier is interconnected is directly related to the degree to which a caller seeking to send a paging message has control over the transmission of the message. PageNet is unaware of circumstances where the calling party has control over the actual transmission of the page. The calling party places the call to the paging carrier (via 800 or some other access method), and dials in or otherwise communicates his or her message. The paging carrier then transmits the message either instantaneously or on a

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9 The caller was connected to an answering service, which in turn placed a call to activate a pager.

10 65 RR 2d at 238.

momentarily delayed basis, at its sole discretion. Furthermore, to PageNet's knowledge, the extent of a calling party's potential control over the transmission of a page has never been a relevant factor in determining whether a service is interconnected.

The FCC's Millicom decision does reference the extent to which users of the Millicom system can control Millicom's transmitters, but that analysis was undertaken to determine the extent to which users of the Millicom system were "authorized users," and the extent to which the systems were "shared" within the statutory framework under consideration.[11] The issue of control was totally unrelated to the definition of interconnection.

There are, of course, limited circumstances in which paging services are not interconnected, including for example, where a hospital provides its own paging services through an internal, private telephone system. In those circumstances, the call to a pager would be handled exclusively over the hospital telephone system, never traversing the public switched network.

The FCC aptly recognizes other services which may not fall within the definition. These would include private land mobile licenses who use the public switched network strictly for control purposes. In those circumstances, the network may be comprised in part of public switched network facilities, but the telecommunications service that is provided never itself travels over the public switched network.

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[11] Id. at 239.

In sum, the Act as well as existing FCC precedent limit the discretion which the FCC has in defining "interconnected service." The Act makes clear that interconnected service refers to those mobile services which are physically interconnected to other common carriers. Further, all contexts in which the FCC has considered the term "interconnected" and "interconnected service," have referenced, respectively, the physical facilities which join two disparate networks, and the services which are provided over those facilities.

C. Public Switched Network

In PageNet's view, the term "public switched network" should be construed to mean the public switched telephone network, as that term is generally used. It would include both the local and interexchange wire and wireless common carrier switched networks. The legislative history offers no suggestion that it intends a different meaning. Since no other meaning is evident from the legislation, and legislative history, the plain meaning of the term, as evidenced from a long line of FCC cases, should control.

D. Service Available to the Public or to Such Classes of Eligible Users as To Be Effectively Available to a Substantial Portion of the Public

By virtually any test the FCC suggests, the vast majority of paging carriers offer services to the public. Both the FCC's rules, and the marketplace dictate this result.

The FCC's rules encourage the provision of service to the public at large. Private carrier paging companies have previously been limited to serving a limited scope of users through eligibility restrictions. Those restrictions have fallen away.

The FCC just this summer removed the last significant eligibility restriction, permitting private carrier paging companies to offer services to individuals, in addition to businesses and other user categories already authorized.[12] Common carrier paging companies have never had restrictions on the type of subscribers eligible to use their systems.

Further, no carrier of which PageNet is aware limits the service it offers to specific businesses, industries, or user groups which might permit a classification of private carriage. Since the mid-1980s, paging services have rapidly become a commodity, and are offered by paging carriers to anyone, anywhere, anytime. Paging services therefore are offered to the public or a substantial portion of the public, and paging carriers offering these services satisfying this element of the CMS definition.

The extent to which system capacity in determining commercial mobile service eligibility should be a factor appears to have little current relevance in the context of paging. Paging carriers have not been circumscribed in their provision of paging services either via capacity constraints or geographic limitations on a level comparable to that which has typified the comparison between SMRs and cellular carriers. Admittedly, cellular carriers having 30 MHz of spectrum at their disposal have begun to vigorously compete with paging carriers with a fraction of the amount of spectrum available to paging carriers. However, to

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12 Amendment of the Commission's Rules to Permit Private Carrier Paging Licensees to Provide Service to Individuals, 8 FCC Rcd. 4822 (1993).

date, these capacity differences have not affected the paging industries' ability to offer services to the public at large. In fact, paging carriers are probably still better able than their cellular counterparts to offer service to the public or to a substantial portion of the public because of the broader geographic scope of many paging services vis a vis cellular services.

E. It Was Congress' Intent To Treat Paging Services as Commercial Mobile Services

As shown above, an analysis of the paging industry compels a finding that paging services fall within the definition of commercial mobile services. This conclusion is consistent with certain other statutory provisions, which PageNet believes reflect the same congressional intent.

It is particularly telling that statute specifically states that private paging licenses on frequencies allocated as of January 1, 1993 will continue to be treated as private mobile service providers for three years after the date of enactment.[13] The Conference Report notes that this reference was included in order to avoid private carrier paging companies from being subjected to state entry regulation between the date of enactment of the statute and the date of federal preemption of state entry regulation.[14] According to the Conference Report at 498, "the Conference

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13 47 U.S.C. § 332 (note).

14 Conference Report at 498.

> included the specific references to paging services in order to clarify that if a paging service that was not offered prior to the enactment of this section [c] is offered in a state that restricts entry for common carriers, and the Commission's regulation has not yet taken effect, the paging service is not to be treated as a common carrier and subjected to such entry regulation. 15

Certainly, the fact that Congress saw fit to grandfather private paging carriers for three years - only until such time as the federal preemption of entry of common carrier mobile services providers protected these private carriers from being subject to common carrier entry regulation - demonstrates that Congress considers private paging companies to come within the definition of commercial mobile service providers, and ultimately, the definition of common carrier. Were Congress to have considered paging services to be private, it would have had no reason to include such a grandfathering provision. Private paging services would have remained private; state entry regulation would not have been a concern as this statute expressly continues the federal preemption of state regulation of private mobile service providers. See § 332(c)(3)(A).

Further, Congress expressly declined to grandfather private carrier paging companies "for purposes of Section 332(c)(6), [foreign ownership]."[16] In mobile services, foreign ownership restrictions apply only to common carriers, and thus to commercial mobile service providers, defined to be common carriers under the

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15 Id.

16 47 U.S.C. § 332(c)(6).

Act.[17] Foreign ownership restrictions expressly do not apply to private mobile service providers.[18] The fact that Congress declined to grandfather private carrier paging companies from application of foreign ownership restrictions strongly suggest that Congress views private carrier paging companies as commercial mobile service providers subject to the foreign ownership restriction of 47 U.S.C. § 310(b).

II. THE FEDERAL COMMUNICATIONS COMMISSION SHOULD FOREBEAR FROM REGULATION OF PAGING COMPANIES UNDER ALL PROVISIONS OF TITLE II EXCEPT SECTIONS 201, 202 AND 208

A. Competition Is a Surrogate for Regulation

When Congress adopted the Communications Act in 1934 (the "Act"), it faced a monopolistic industry. Although the demand for communications services was increasing, the industry was dominated by only four very large firms which had virtual monopolies over all telephone and telegraph communications. These companies were AT&T, Western Union, ITT, and RCA. The legislative history reveals that the Act was intended to deal with an industry characterized by "natural monopoly" where new entry was all but nonexistent.[19] Thus, the purpose of the Act was to promote

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17 Id. at 332(c)(1).

18 47 U.S.C. § 332(c)(6). In fact, without amending section 310(b) of the 1934 Act, as amended, Congress could not apply foreign ownership restriction to private mobile service providers.

19 Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations, Further Notice of Inquiry and Proposed Rulemaking, 84 FCC 2d 445, 462 (1981) ("Further Notice of Inquiry and Proposed Rulemaking").

competition in this monopolized market through various regulatory approaches set out in Title II.

In the Competitive Carrier Docket[20], the FCC recognized that the industry had changed since adoption of the Act, and decided to reevaluate the appropriateness of continuing the same regulatory program developed under different circumstances.[21] The FCC concluded that the regulatory measures of the sort contained in Title II made sense only in the context of an industry lacking competition[22], and therefore, should not be applied to industries characterized by strong competition.[23] Consequently, the FCC found that to apply the full panoply of Title II requirements to competitive markets often resulted in the costs of regulation outweighing the benefits.[24]

In order to implement its finding that carriers should not be regulated blindly under Title II, the FCC distinguished between carriers on the basis of their dominance in the marketplace.[25] The FCC defined a dominant carrier as one that possesses market

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20 Policy and Rules Concerning Rates and Facilities Authorizations for Competitive Carrier Services, CC Docket No. 79-252.

21 Policy and Rules Concerning Rates and Facilities Authorizations for Competitive Carrier Services, First Report and Order, 85 FCC 2d 1, 6 (1980) ("First Report and Order").

22 Further Notice of Inquiry and Proposed Rulemaking, 84 FCC 2d at 462.

23 Id.

24 Id. at 471.

25 First Report and Order, 85 FCC 2d at 6, 20.

power.[26] Market power refers to the control a firm can exercise in setting the price of its output above competitive levels in order to earn supranormal profits, or setting the price below competitive levels in an effort to eliminate existing competitors.[27] By contrast, a firm lacking market power ". . . does not have the ability or incentive to price its services unreasonably, to discriminate among customers unjustly, to terminate or reduce services unreasonably or to overbuild its facilities".[28] In short, non-dominant carriers are subject to ". . . sufficient competitive pressure so that their performance is, and can be presumed to continue to be, in the public interest, without detailed governmental oversight and intervention".[29]

In determining whether a firm has market power and is thus dominant, the FCC found, inter alia, the following factors significant: (1) market share; (2) the number and size distribution of competing firms; (3) the nature of barriers to entry; (4) the availability of reasonably substitutable services;

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26 Id. at 21.

27 Id.

28 Id. at 20-21.

29 Id. at 20. Since non-dominant firms could not rationally engage in the activities proscribed by the provisions of Title II, the FCC concluded that regulation of these firms would result in direct and indirect anti-competitive effects. Further Notice of Inquiry and Proposed Rulemaking, 84 FCC 2d at 471. Specifically, the FCC pointed to (1) the artificial barriers to entry created by application of Section 214 entry and exit authority; (2) the slowed introduction of new services, dampened competitive responses, and encouragement of price collusion as a result of enforcement of the tariff requirements; and (3) the inhibitions on entry due to imposition of the duty to deal requirements. Id.

(5) control of bottleneck facilities; and (6) the potential for future market entrants.[30]

Congress expressly recognized the continuing validity of these factors in the Omnibus Budget Reconciliation Act of 1993.[31] Specifically, the Act requires the FCC to include in its annual report an examination of the competitive market conditions with respect to commercial mobile services. In carrying out this mandate, Congress directs the FCC to review the following factors,

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30 First Report and Order, 85 FCC 2d at 21. The FCC has applied its test for dominance to various carriers in the telecommunications industry, and has found a number of carriers to be nondominant. For example, in the First Report and Order, the FCC characterized specialized common carriers and resale carriers as nondominant. First Report and Order, 85 FCC 2d at 28-30. The FCC based its determination upon the fact that both were subject to actual and potential competition due to the multitude of substitutable services available and low barriers to entry. Id. In addition, the FCC found that they could not price their products above competitive levels but were instead forced to accept the market price. Id. The FCC also held interexchange carriers ("IXCs") other than AT&T to be nondominant. Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations, Fourth Report and Order, 95 FCC 2d 554, 575 (1983). This decision was based upon a finding that there were many competitors in the market and minimal barriers to entry such that these firms had no ability to discriminate unreasonably or charge unlawful rates. Id. In AT&T v. FCC, however, the FCC's determination to forebear from imposing §§ 202 and 203 of the Act was reversed, based on the Court's conclusion that the plain language of the Communications Act mandated the filing of tariffs. AT&T v. FCC, 978 F.2d 7272 9D.C. Cir. 1992) rehearing en banc denied, Jan. 21, 1993; cert. denied, S. Ct. Docket # 92-1684, 1993 Lexis 4392; ___ U.S. ____, 61 U.S.L.W. 3853 (June 21, 1983). Nevertheless, no court has questioned the FCC's reliance on market forces as a surrogate for competition or its conclusion that it is unnecessary [in the absence of a statutory mandate] to regulate firms that have no market power.

31 Pub. L. No. 103-66, Title VI, § 6002(b), 107 Stat. 312, 392 (1993).

which are consistent with those enumerated above: (1) the number of competitors in various commercial mobile services; (2) an analysis of whether or not there is effective competition; (3) an analysis of whether any of such competitors have a dominant share of the market for such services; and (4) whether additional providers or classes of providers in those services would be likely to enhance competition.[32]

According to the Conference Report (at 23) the purpose of Section 332(c)(1)(C) "is to recognize that market conditions may justify differences in the regulatory treatment of some providers of mobile services. . . ." For instance, the Commission may, under the authority of this provision, forebear from regulating some providers of commercial mobile services if it finds that such regulation is not necessary to promote competition or to protect consumers against unjust, unreasonable or discriminatory rates.

B. The Paging Industry Is Vigorously Competitive

The United States paging industry is characterized by intense competition, and all projections indicate that fierce competition will continue through the next decade and beyond.[33] The level of competition in the paging market is such that no one carrier wields market power. This is demonstrated by (1) the fact that no carrier controls a significant share of the overall paging

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32 Id.

33 Amendment of the Commission's Rules to Permit Private Carrier Paging Licensees to Provide Service to Individuals, 8 FCC Rcd. 4822 (1993); R. Lane & J. Kealey, Paging Study Shows More Competition and Consolidation, Telocator, October 1992, note 3, at 12.

market[34]; (2) the increase in the number of competitors in each local market[35]; (3) minimal barriers to entry; (4) declining prices of pagers and pager services[36]; (4) new technological advances in the paging industry[37]; and (5) the advent of other technologies that are reasonably substitutable with paging services[38].

1. Market Share and Increasing Numbers of Competitors

The overall paging industry remains fairly fragmented with no one carrier controlling a significant percentage of the market.[39] The fact that no carrier commands a substantial portion of the market is a good indicator that no carrier wields market power. In addition, there has been a considerable increase in the number of competitors in the local paging markets.[40] Gone are the days when one carrier dominated each of these markets.[41] In fact, a recent study that only evaluated competition among radio common carriers ("RCCs") found that RCCs have an average of five other RCCs competing with them in a given market, and some have as many

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34 Lane & Kealey, supra, at 8, 10.

35 Id.

36 Robert G. Wysor, Survey Shows Paging Growth and Predicts Stable Revenue, Telocator, August/September 1992, at 20.

37 Frost & Sullivan, U.S. Market for Radio Paging (1991) at 269.

38 Id. at 272.

39 Id.

40 Lane & Kealey, supra.

41 Lane & Kealey, supra.

as nineteen.[42] If this study had been extended to include paging competition provided by private carriers, and cellular carriers, and SMRs providing paging services, the number of competitors would certainly be even higher.

2. Minimal Barriers to Entry

The accretion in the number of competitors in the paging industry reflects minimal barriers to entry. First, the paging industry has experienced rapid growth in demand for paging services, creating new opportunities for competitors. The number of paging subscribers has increased from 9.3 million in 1990[43] to 15.3 million in 1992[44]. In 1992 alone, the industry added 3.5 million pagers representing a growth rate in that year of 30 percent, the highest the industry has experienced since 1986.[45] This increase is due to the declining price of pagers and pager services, overall awareness and acceptance of wireless communications by the general population, and the utilization of a retail pager market targeted at individual consumers.[46] The future warrants even greater demand as the distance covered by daily commuters steadily increases and the volume of business travel continues to rise.

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42 Randy Ridley, 1993 Survey of Mobile Radio Paging Operators, Communications, September 1993, at 20.

43 EMCI, The State of the U.S. Paging Industry -- Subscriber Growth, End-User, and Carrier Trends: 1990 at 33 (1990).

44 EMCI, The State of the U.S. Paging Industry: 1993 at 1 (1993) [hereinafter "EMCI 1993"].

45 Id.

46 Id. at 3.